

Wetland Mitigation Banking Management Overview



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National and State Goal

No Net Loss

of

Values and Functions



**Mitigation Planning
IS
the Permitting Process**

Mitigation includes:

- Avoidance
- Minimization
- Compensation

Compensatory Mitigation Types

- Wetland Creation
- Wetland Restoration
- Wetland Enhancement
- Wetland Preservation

Regulatory Guidance Letter

- June 2001 NRC- Compensating for Wetland Losses under the CWA
- RGL No. 01-1 (October 31, 2001)
- RGL No. 02-2 (December 24, 2002)
- DRAFT Compensatory Mitigation Guidelines (Public Notice December 2003)
- **Compensatory Mitigation for Losses of Aquatic Resources (Fed. Reg. April 10, 2008)**
- RGL 06-03 Mitigation Monitoring Report

“Final Mitigation Rule”

33 CFR Part 332 (Fed. Reg. April 10, 2008)

- 1. General Requirements (332.3)**
- 2. Planning Guidance (332.4)**
- 3. Performance Standards (332.5)**
- 4. Monitoring Requirements (332.6)**
- 5. Long-term Management (332.7)**
- 6. Banks & In-lieu Fee Programs (332.8)**

“Final Mitigation Rule”

Establishes a Mitigation Hierarchy

- 1. Mitigation Banks**
- 2. In-lieu Fee Programs**
- 3. Permittee Responsible Mitigation**

**Preference for Banking
is
Major Shift in
Regulatory Thinking**

**Permittee
Responsible
Mitigation**

Traditional Approach

Permittee Responsible Mitigation

Permittee is Responsible for:

1. Site Selection, Planning & Permitting
2. Land Interest Acquisition
3. Construction
4. Post-Construction Monitoring
5. Long-term Management & Protection

Financial Assurances

- Transient Nature of the Permittee
- Financial Instruments
 - Statement of Commitment
 - Letter of Credit
 - Performance Bond
 - Escrowed Account

Post-Construction Monitoring

- Generally, five year minimum
- Based on Performance Standards
 - “measurable parameters” not “mitigation goals”
- Can be modified (early release for good behavior)
- RGL 06-03 Monitoring Reports

Long-term Management

- Ownership Options
- Protective Covenants
 - Deed Restriction
 - Conservation Easement
- Public Land Partnerships

Economic of Mitigation

Cost of Mitigation (for 0.5 acre impact)

Site Selection, Design & Permitting \$30K

Land Acquisition \$25K

Construction \$50K

Post-Construction Monitoring \$25K

Total \$130K

Permittee Responsible Mitigation

Like owning a dog:

<u>Activity</u>	<u>Year</u>
Site Selection, Planning & Permitting	1
Construction	2
Post-Construction Monitoring (5yrs	7
Long-term Management & Protection	?

Mitigation Banking

New Approach

Mitigation Banking Concept

Mitigation is constructed

BEFORE

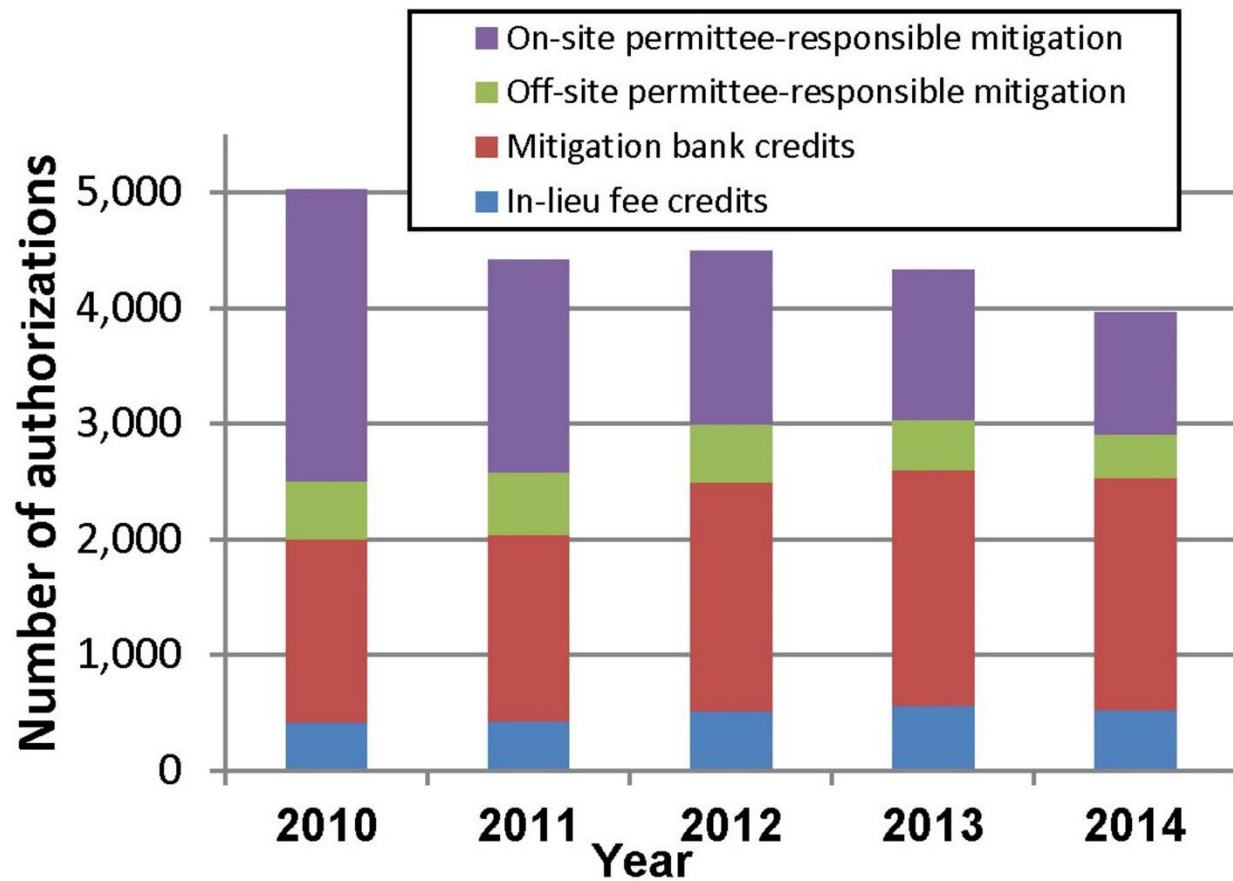
the wetlands are impacted

Less Risk for the Permitting Agencies



**Major Shift in Regulatory
Thinking**

**Took 2 to 3 years to be
Accepted**



Number of all authorizations requiring compensatory mitigation, by mitigation source, from 2010-2014.

Banking Operations Basics

- Owned & Operated by Private Third Party
“Wetland Banker”
- Sell Mitigation “Credits” to permittees
- USACE & DEP accepts the Credit as
Compensatory Mitigation

Banking Approval Process

- Approved by Interagency Review Team (IRT)
- Banking Prospectus (Concept Plan)
- Banking Instrument
 - Banking Operation Plan
 - Mitigation Site Plan (s)
 - Can be amended (additional sites)

IRT Approval Process

Compensatory Mitigation Rule Timeline for Bank or ILF Instrument Approval*

		Event	# of Days**	
Phase I		Optional Preliminary Review of Draft Prospectus	30	DE provides copies of draft prospectus to IRT and will provide comments back to the sponsor within 30 days.
	Sponsor Prepares and Submits Prospectus ~DE must notify sponsor of completeness w/in 30 days of submission~			
Day 1**		Complete Prospectus Received by DE		
Phase II	Day 30	Public notice must be provided within 30 days of receipt of a complete prospectus	30	
	Day 60	30-Day Public Comment Period	30	
	Day 90	DE must provide the sponsor with an initial evaluation letter within 30 days of the end of the public comment period.	30	15 DE distributes comments to IRT members and sponsor within 15 days of the close of the public comment period.
Sponsor Considers Comments, Prepares and Submits Draft Instrument ~DE must notify sponsor of completeness w/in 30 days of submission~				
Day 1		Complete Draft Instrument Received by IRT Members		
Phase III	Day 90	30-day IRT comment period begins 5 days after DE distributes draft instrument to IRT members	30	
	Day 90	DE discusses comments with IRT and seeks to resolve issues ~ # of days variable~	60	90 Within 90 days of the receipt of a complete draft instrument by IRT members, the DE must notify the sponsor of the status of the IRT review.
Sponsor Prepares Final Instrument ~Sponsor provides copies to DE and all IRT members~				
Day 1		Final Instrument Received by DE & IRT		
Phase IV	Day 30	DE must notify IRT members of intent to approve/not approve instrument within 30 days of receipt.	30	45 IRT members have 45 days from submission of final instrument to object to approval of the instrument and initiate the dispute resolution process.
	Day 45	Remainder of time for initiation of dispute resolution process by IRT members	15	
Day 45		INSTRUMENT APPROVED/NOT APPROVED, or DISPUTE RESOLUTION PROCESS INITIATED		

EPA/Corps draft 4/02/08

Total Required Federal Review (Phases II-IV): ≤225 Days

*Timeline also applies to amendments

**The timeline in this column uses the maximum number of days allowed for each phase.

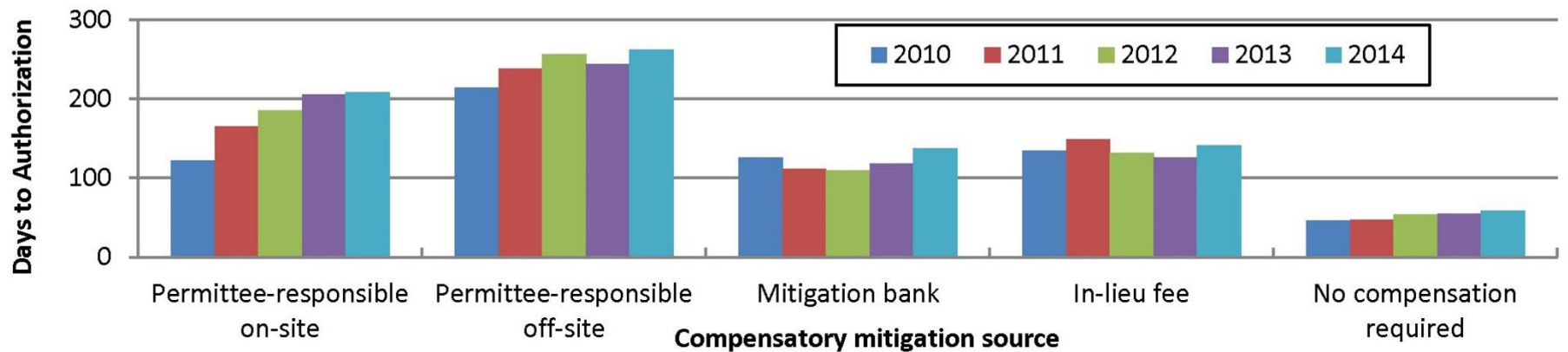
Banking Operations Plan

1. Who owns the site
2. Who is financially responsible
3. How the site will be protected
4. How the site will be managed long-term
5. Service Area
6. Credit Release Schedule

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Permit Processing Time



Average processing times for permit authorizations, by compensatory mitigation source, for 2010 to 2014.

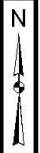
PRP Mitigation ~ 200 Days
Banking ~ 100 Days

Banking Advantages

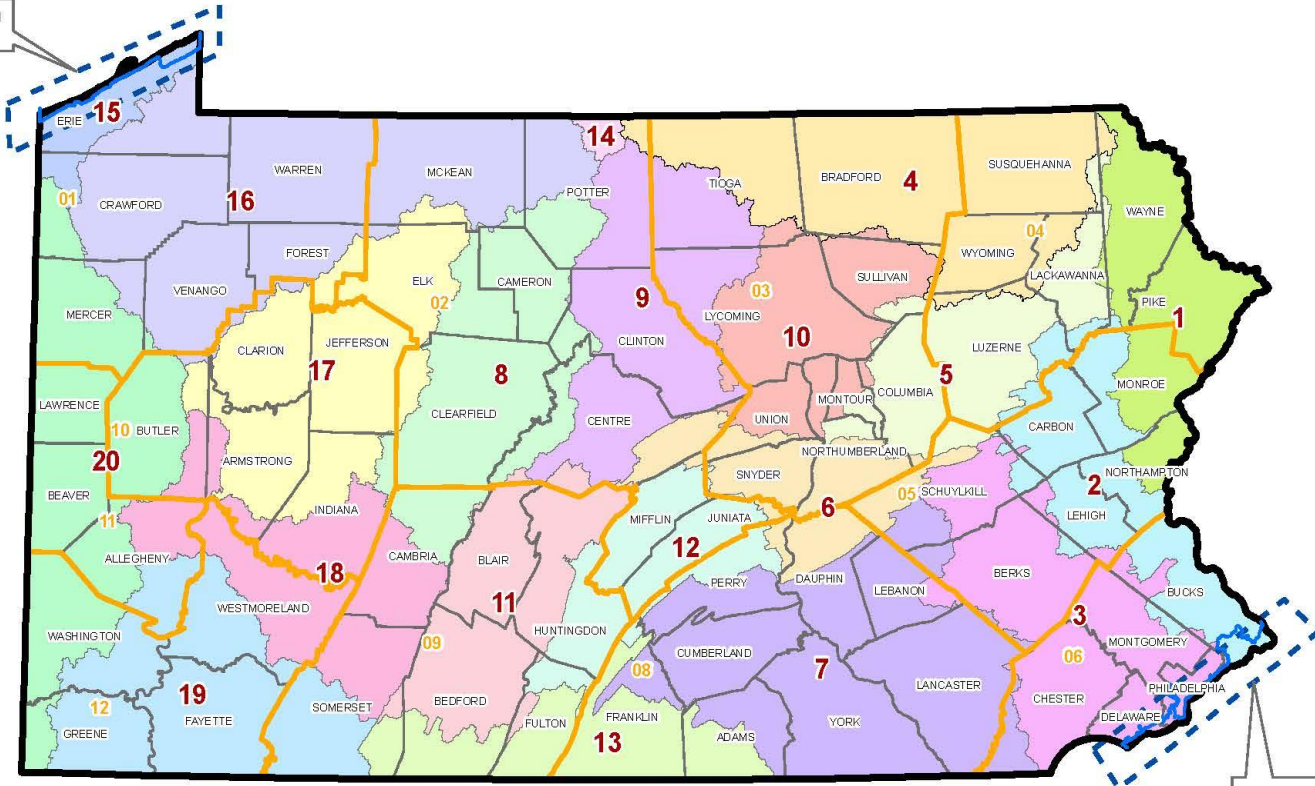
1. Regulatory Preference
2. Predictable Fixed Cost
3. Reduces Permitting Time
4. No Long-term Management Obligations

Key Management Questions

- 1. Approved Bank in my Service Area?**
- 2. Are there Credits Available?**
- 3. What is the Cost?**



Coastal Zone 1
See figure 2A



Coastal Zone 2
See figure 2B

PA State Water Plan Subbasins

- | | |
|-----------------------------------|----------------------|
| 1 Upper Delaware | 11 Upper Juniata |
| 2 Central Delaware | 12 Lower Juniata |
| 3 Lower Delaware | 13 Potomac |
| 4 Upper Susquehanna | 14 Genesee |
| 5 Upper Central Susquehanna | 15 Lake Erie |
| 6 Lower Central Susquehanna | 16 Upper Allegheny |
| 7 Lower Susquehanna | 17 Central Allegheny |
| 8 Upper West Branch Susquehanna | 18 Lower Allegheny |
| 9 Central West Branch Susquehanna | 19 Monongahela |
| 10 Lower West Branch Susquehanna | 20 Ohio |

Legend

- Pennsylvania Coastal Zones
- Pennsylvania Engineering Districts
- Coastal Zones
- County Boundaries

SKELLY and LOY, Inc. September 2008 Figure 2

Statewide Banking Agreement

BANK SERVICE AREA

Job No: R05-0067 NOT TO SCALE

Credit Release Schedule

10%	Bank is Approved
25%	Bank is Constructed
50%	After Year 1 Monitoring
75%	After Year 2 Monitoring
100%	After Year 5 Monitoring

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In-lieu Fee Programs

Same as Private Wetland Banks, except:

- Owned & Operated by Government Agency or Non-profit Organization.
- Credits are available **before** the mitigation is constructed
- PA ILF Program is “Under Development”



Thank You for Your Attention